



JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
LANSING



STEVEN E. CHESTER  
DIRECTOR

February 21, 2006

1. Bill Number and Sponsor:

House Bill 5711  
Representative John M. Proos et al.

House Bill 5712  
Representative Darwin Booher et al.

House Bill 5713  
Representative Leslie Mortimer et al.

House Bill 5714  
Representative John Stahl et al.

House Bill 5715  
Representative Neal Nitz et al.

House Bill 5716  
Representative Phillip Pavlov et al.

Referred to House Committee on Agriculture

2. Purpose:

To amend the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, by creating a new Part 86 (Agriculture), and amending Part 88 (Water Pollution and Environmental Protection Act). These bills set up a system by which large Concentrated Animal Feeding Operations (CAFO) would be exempted from (1) regulations that protect the public health and the state's water resources from water pollution; (2) meeting permit requirements of Part 31 (Water Resources Protection); and (3) any sanction, remediation, or correction of a violation of Part 31, unless the violation was knowing and reckless and caused impairment to the natural resources.

The bills also provide that the Department of Environmental Quality (DEQ) cannot act upon complaints from citizens about potential violations or public health issues unless the citizens provide their name and address and this information is made public. Further, the bills provide that the DEQ may recover the cost for

investigation of complaints if the complainant has had more than two unverified complaints.

The bills require the DEQ to create a booklet for free distribution that identifies the environmental laws that are significant to farm and farming operations. The bills also require the DEQ and the Michigan Department of Agriculture (MDA) to work cooperatively to develop common sense approaches to the environmental laws identified in the booklet.

The bills also provide that grants or loans for projects designed to address agricultural nonpoint source pollutants shall be authorized and administered by the MDA.

3. How This Legislation Impacts Current Programs in the Department:

The bills would put in jeopardy Michigan's federally-delegated authority to issue National Pollutant Discharge Elimination System (NPDES) under the Clean Water Act. These permits are issued to all types and classes of facilities that have discharges to the surface waters of Michigan. Without this delegation, the United States Environmental Protection Agency (U.S. EPA) would administer and enforce the program in Michigan.

If the DEQ lost this delegation, the state also has the potential to lose \$8.4 million in federal funds provided to administer and enforce these programs.

4. Introduced at Agency Request:

No.

5. Agency Support:

No.

6. Justification for the Department's Position:

- Sets up a regulatory system that exempts large industrial livestock farms from a discharge permit requirement and therefore sets up a unique, separate, and inappropriate regulatory class.
- Delegates the State's responsibility to protect public health and the environment to an undefined, nongovernmental entity. The package attempts to create regulatory status for the Michigan Agriculture Environmental Assurance Program (MAEAP) that is most likely an unconstitutional delegation of legislative authority and a violation of constitutional due process protections.

- Places reliance for public health and environmental protection on a program and entity that has a legally insufficient governance structure, and is without legally enforceable standards.
- Places the control and decision-making for what standards farms and farming operations must meet to protect public health and the environment in the hands of the regulated community and eliminates the public from the decision-making process.
- Accepts the MAEAP as meeting the public health and environment protection requirements of the state, even though the program has never been evaluated or audited as to its efficacy or conformance to environmental standards.
- Accepts the MAEAP without any provision for state overview, evaluation, or audit, or requirement to stay current.
- Sets a standard (i.e. “knowing and reckless”) for requiring compliance with environmental law at a level that exceeds that needed to make a criminal conviction. In addition, it removes the ability of the state to take action to prevent the threat to public health or the environment or seek restitution of environmental damage caused.
- Creates a condition on citizen complaints (name and address) that will have a chilling effect on citizen involvement and whistle blowers. This provision is also a limitation on the DEQ in investigating complaints that may have a real impact on the public health and environmental protection solely based on the fact a citizen will not leave their name and address.

7. State Revenue/Budgetary Implications:

As permitted facilities, they would be required to pay annual permit fees and application fees. As nonpermitted facilities the state would lose that revenue and would still need to expend significant efforts and resources to implement these bills. The level of effort would approach that needed to regulate these facilities under the NPDES permit program, but without sufficient resources.

8. Implications to Local Units of Government:

Not known.

9. Administrative Rules Implications:

The DEQ would need to amend its administrative rules that relate to CAFOs.

10. Other Pertinent Information:

The loss of the federally-delegated NPDES permit program would have significant adverse impacts on Michigan's economic development. The U.S. EPA does not have the staff or expertise to issue permits in Michigan on a timely basis. New or expanded businesses needing permits would likely experience long delays in getting needed water discharge permits.

A handwritten signature in black ink, appearing to read "S. E. Chester", written over a horizontal line.

Steven E. Chester, Director  
Department of Environmental Quality

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